

REMARKS

The Office Action mailed May 17, 2010, has been received and reviewed. Claims 1-21 are pending in the application. Claim 1-21 stand rejected. Applicant has amended claims 6, 9, 18 and 21, and respectfully requests reconsideration of the application as amended herein. No new matter has been added.

35 U.S.C. § 112 Rejections

Claims 6-13 and 18-21 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant has amended each of independent claims 6 and 18 to recite “repeatedly adjusting.” Accordingly, Applicant’s amended independent claim 6 with claims 7-13 depending therefrom and independent claim 18 with claims 19-21 depending therefrom comply with the written description requirement under 35 U.S.C. § 112, first paragraph. Therefore, Applicant respectfully requests the rejections of claims 6-13 and 18-21 under 35 U.S.C. § 112, first paragraph, be withdrawn.

35 U.S.C. § 102(e) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 1-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,700 to Razoumov (“Razoumov”). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 1-21 are improper because Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims.

Claims 1 and 14 each recite, in part, “determining a first transmission energy setpoint as a function of the first transmission frame error rate and a first transmission quality ... and ... determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality.”

With respect to claims 1 and 14, the Office Action alleges that “Razoumov discloses...determining a first transmission energy setpoint as a function of the first transmission frame error rate (col. 7, lines 20-23 and Fig. 2, E1 is evaluated as a function of FER).” Applicant respectfully disagrees and asserts that col. 7, lines 20-23 of Razoumov discloses *evaluating FER as a function of energy* and lacks any disclosure of determining a transmission *energy* setpoint *as a function of a frame error rate (FER)*. Furthermore, Applicant asserts that any disclosure in Razoumov of “determining” “transmission energy setpoint E1” and “retransmission energy setpoint E2” is limited to recitations of “energies E1 and E2 are properly selected”(col. 4, lines 38-39) and to “choose E1 and E2 in a manner yielding minimum total transmission energy” (col. 4, lines 45-46). Accordingly, Razoumov’s disclosure of “properly selected” and to “choose” transmission energy E1 and retransmission energy E2 does not disclose the “identical invention [] in as complete detail as is contained in the claim” as is required for anticipation under 35 U.S.C. §102.

Therefore, since at least Applicant’s claimed elements of “determining *a transmission energy setpoint as a function of the transmission frame error rate*” and “determining *a retransmission energy setpoint as a function of the retransmission frame error rate*” are not disclosed in “as complete detail as is contained in the claim” as is required for anticipation under 35 U.S.C. §102, Razoumov cannot anticipate under 35 U.S.C. §102 Applicant’s invention as presently claimed in independent claims 1 and 14, and dependent claims 2-5 and 15-17, respectively depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

With respect to claims 6-13 and 18-21, Applicant's invention as claimed in amended independent claims 6 and 18 recite "***repeatedly adjusting the first transmission energy setpoint on occurrence of a first transmission error*** in the first transmission" which is not disclosed in Razoumov. Generally, Razoumov does not appear to have two independently adjustable setpoints used to perform independent steps nor is the initial setpoint repeatedly adjusted based upon errors in initial transmissions. Specifically, at least Applicant's claimed elements of "***repeatedly adjusting the first transmission energy setpoint on occurrence of a first transmission error*** in the first transmission" and "***adjusting the retransmission energy setpoint on occurrence of a retransmission error*** in the retransmission" are not disclosed in Razoumov.

Applicant respectfully notes that Applicant claim repeated adjustments to an initial or "first transmission energy setpoint" based upon "occurrence of a first transmission error" in the initial transmission of the data. Applicant further claims adjustments to a "retransmission energy setpoint" based upon "occurrence of a retransmission error" in the retransmission of the data (not the initial transmission of the data). Applicant does not dispute that Razoumov discloses adjusting energy levels, however, Razoumov's approach is not the same approach for adjusting as claimed by Applicant in amended independent claims 6 and 18.

According to Razoumov, Razoumov's adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the **previous** transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the **previous** transmissions (e.g., ***initial transmission***, retransmission 1, etc.) and not initial transmission setpoints being adjusted based upon the error outcome of initial transmissions and retransmission setpoints being adjusted based upon the error outcome of the retransmissions. (Razoumov, col. 4, lines 30-40, col. 3, lines 62-63 and col. 7, formula 22). In other words, Razoumov discloses adjusting a subsequent transmission's power level based upon the outcome of the immediately **previous** transmission (i.e., either initial transmission or retransmission).

In distinct contrast, Applicant's invention as claimed in amended independent claims 6 and 18 recites, in part, "***repeatedly adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission***" and "***adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission***".

Accordingly, Applicant's invention as presently claimed in amended independent claims 6 and 18 is not disclosed in "as complete detail as is contained in the claim" as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov **cannot** anticipate under 35 U.S.C. §102 Applicant's invention as presently claimed in amended independent claims 6 and 18, and claims 7-13 and 19-21 respectively depending therefrom.

Accordingly, Applicant asserts that claims 1-21 are allowable over the cited prior art and respectfully requests that such rejections be withdrawn.

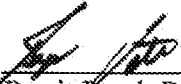
CONCLUSION

Claims 1-21 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned representative.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: 8/12/2010

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